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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 20th February 2013

No. 1638—li/1(B)-15/2005-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2012 in I. D. Case No. 36 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s FALCON Marine Exports Ltd., Paradeep and their Workmen Smt. Sebati Sahoo and 8 others represented through the authorized persons was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 36 OF 2005

Dated the 31st December 2012

Present :

S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of M/s FALCON .. First Party—Management
Marine exports Ltd., Paradeep.

And

Their Workmen Smt. Sebati Sahoo, .. Second Party—Workmen
& 8 others represented through the
authorised person.

Appearances :

Shri R. N. Rath, Legal Advisor	..	For First Party—Management
Smt. S. Sahoo	..	For Second Party—Workmen

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 7142—li/1(B)-15/2005-LE., dated the 23rd August 2008.

"Whether the action of the management of FALCON Marine Exports Ltd., Paradeep in terminating the services of Smt. Parbati Sahoo and Sumati Khatua with effect from June, 2003 and Sebati Sahoo, Sebati Mallick, Chandrakanti Satapathy, Basanti Dalai, Sumati Nayak and Pramila Swain with effect from August, 2003 is legal and/or justified ? If not, to what relief the workmen are entitled ?".

2. The case of the workman in brief, as set out in their statement of claim is that they were appointed as Processing Grader under the management between the year 1985 to 1994 and discharging their duties sincerely, honestly and to the best satisfaction of the management. While working as such, the management had illegally terminated their services by way of refusal of employment without compliance of the provisions of the Industrial Disputes Act, 1947. According to the workmen, they all have completed more than 240 days of service in every year. On these averments, the workmen have prayed for their reinstatement in service with full back wages.

3. On the other hand, the management appeared and filed written statement stating that the present reference is not maintainable either in law or on facts. According to the management, the above named workmen remained absent without any intimation or permission and absconded themselves from their duties. Further according to the management, the workmen were the piece rated workers engaged as and when required. The management has stated that as the workmen were piece rated workers who have engaged intermittently as per requirement of the management. Further case of the management is that as there was no refusal of employment or termination of service, there was no occasion for serving any prior notice or payment of any compensation to the workmen. On these back grounds, the management has prayed to answer the reference in favour of the management.

4. In view of the above pleadings of both the parties, the following issues have been settled :

ISSUES

- (i) "Whether the action of the management of FALCON Marine Exports Ltd., Paradeep in terminating the services of Smt. Parbati Sahoo and Sumati Khatua with effect from June, 2003 and Sebati Sahoo, Sebati Mallick, Chandrakanti Satapathy, Basanti Dalai, Sumati Nayak and Pramila Swain with effect from August, 2003 is legal and/or justified ?
- (ii) If not, to what relief the workmen are entitled ?"

FINDINGS

5. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

During the course of hearing, both the parties remained absent and neither adduced any evidence nor proved any document in support of their cases. Law is well settled that :

"XXX. In a given case, if the workman remains absent, it becomes the duty of the Tribunal to consider the claim statement filed by the workman as well as the written statement filed by the management and any other records which is made available to the Labour Court and it should answer the point of dispute referred to it on merit".

So, in view of the above settled position of law, now this Court has to answer the reference basing on the pleadings of both the parties and any other documents which is made available in the case record.

6. In the statement of claim, the workmen have pleaded that they were terminated from services by way of refusal of employment without complying the provisions of the Industrial Disputes Act, 1947. On the other hand, the management has pleaded that the workmen were working on piece rated basis as and when required and also working intermittantly. To substantiate their pleas, the workmen have not filed a single piece of paper to show that they were working under the management continuously and have completed 240 days of service in twelve calendar months preceding to the date of alleged termination by way of refusal of employment. So, without any documentary evidence, it cannot be said that the workmen were working under the management continuously. So the workmen have miserably failed to establish their cases. Therefore, in view of the discussions made above, I am of the opinion that the workmen are not entitled to get any relief as prayed for, Both the issues are answered accordingly.

7. Hence Ordered :

That the action of the management of FALCON Marine Exports Ltd., Paradeep in terminating the services of Smt. Parbati Sahoo and Sumati Khatua with effect from June, 2003 and Sebati Sahoo, Sebati Mallick, Chandrakanti Satapathy, Basanti Dalai, Sumati Nayak and Pramila Swain with effect from August, 2003 is legal and justified. The above named workmen are not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
31-12-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
31-12-2012
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
J. DALANAYAK
Under-Secretary to Government